

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

DANA PRESTON KELLY,
Plaintiff,
v.
KILOLO KIJAKAZI,
Defendant.

Case No. 20-cv-07821-LB

**ORDER GRANTING THE
PLAINTIFF'S COUNSEL'S MOTION
FOR ATTORNEY'S FEES**

Re: ECF No. 31

INTRODUCTION

In this Social Security appeal, the court previously granted the plaintiff's motion for summary judgment and remanded the action to the Social Security Administration for further proceedings.¹ On remand, the plaintiff received a past-due benefits award.² His counsel now seeks fees of \$13,500, which is within the twenty-five-percent limit in 42 U.S.C. § 406(b) and the representation agreement with his client.³ The court can decide this matter without oral argument. *See* N.D. Cal. Civ. L.R. 7-1(b). The court grants the motion.

¹ Order – ECF No. 27. Citations refer to material in the Electronic Case File (ECF); pinpoint citations are to the ECF-generated page numbers at the top of documents.

² Notice of Award – ECF No. 31-3 at 1–6.

³ Mot. – ECF No. 31.

1 **STATEMENT**

2 The Commissioner withheld twenty-five percent of the retroactive benefits, or \$17,437.53.⁴
 3 The plaintiff has a fee agreement with his lawyer that provides for a twenty-five-percent
 4 contingency fee of the award as of the final decision.⁵ The plaintiff's attorney has already received
 5 \$3,222 in attorney's fees under the Equal Access to Justice Act (EAJA).⁶ He agreed that he will
 6 reimburse the plaintiff the EAJA fees.⁷

7 The Commissioner filed a response to the plaintiff's motion stating that he "does not assent or
 8 object to" the fee request.⁸

9 **ANALYSIS**

10 Under 42 U.S.C. § 406(b), "[w]henver a court renders a judgment favorable to a [social
 11 security] claimant . . . , the court may determine and allow as part of its judgment a reasonable
 12 fee" for the claimant's counsel, which can be no more than twenty-five percent of the total of past-
 13 due benefits awarded to the claimant. 42 U.S.C. § 406(b)(1)(A). A court may award such a fee
 14 even if the court's judgment did not immediately result in an award of past-due benefits; where the
 15 court has rendered a judgment favorable to a claimant by reversing an earlier determination by an
 16 ALJ and remanding for further consideration, the court may calculate the twenty-five-percent fee
 17 based upon any past-due benefits awarded on remand. *See, e.g., Crawford v. Astrue*, 586 F.3d
 18 1142, 1147 (9th Cir. 2009) (en banc).

19 In considering a motion for attorney's fees under § 406(b), the court must review counsel's
 20 request "as an independent check" to ensure that the contingency fee agreement "yield[s]
 21 reasonable results." *See Gisbrecht v. Barnhart*, 535 U.S. 789, 807 (2002). Section 406(b) "does
 22 not displace contingent-fee agreements within the statutory ceiling; instead, § 406(b) instructs
 23 courts to review for reasonableness fees yielded by those agreements." *Id.* at 808–09. To evaluate
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25 ⁴ Notice of Award – ECF No. 31-3 at 3.

26 ⁵ Soc. Sec. Representation Agreement – ECF No. 31-1.

27 ⁶ Order – ECF No. 30.

27 ⁷ Mot. – ECF No. 31 at 6.

28 ⁸ Resp. – ECF No. 32 at 2.

1 the reasonableness of a fee request under § 406(b), the court considers the character of the
2 representation and the results achieved. *Id.* at 808; *see also Crawford*, 586 F.3d at 1151. This
3 includes analyzing whether substandard representation justifies awarding less than twenty-five
4 percent in fees; any delay in the proceedings attributable to the attorney requesting the fee;
5 whether the benefits of the representation are out of proportion to time spent on the case; and the
6 risk counsel assumed by accepting the case. *See Crawford*, 586 F.3d at 1151–52 (citing *Gisbrecht*,
7 535 U.S. at 808). If an attorney “is responsible for delay . . . a reduction [of fees] is in order so that
8 the attorney will not profit from the accumulation of benefits during the pendency of the case in
9 court.” *Gisbrecht*, 535 U.S. at 808 (cleaned up); *see also Crawford*, 586 F.3d at 1151.

10 The court must offset an award of § 406(b) attorney’s fees by any award of fees granted under
11 the EAJA. *Gisbrecht*, 535 U.S. at 796; *Parrish v. Comm’r of Soc. Sec. Admin.*, 698 F.3d 1215,
12 1218 (9th Cir. 2012).

13 The twenty-five-percent contingency-fee agreement is within § 406(b)(1)(A)’s ceiling, and the
14 amount is reasonable.

15 CONCLUSION

16 The court holds that a fee award of \$13,500 is reasonable under § 406(b). The plaintiff’s
17 counsel must refund the plaintiff the EAJA fees, which results in a net (remaining) fee award of
18 \$10,278.

19 **IT IS SO ORDERED.**

20 Dated: August 31, 2022



21
22 LAUREL BEELER
United States Magistrate Judge
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